

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on January 20, 1999 at 3:05 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Aubyn A. Curtiss (R)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: House Bills 158-165, 1/23/1999
Executive Action: HB 120, HB 96

Chairman Tash distributed copies of the Rules of Procedure for members. **EXHIBIT(nah15a01)**

HEARING ON HOUSE BILL 158

Sponsor: Rep. Karl Ohs, HD 33, presented the bill. He explained the bill dealt with privatizing the inspection of underground storage tanks.

Proponents: Denise Mills, Remediation Division Administrator for the Department of Environmental Quality, testified in support of the bill. **EXHIBIT(nah15a02)** She outlined the bill provisions in her letter. Mills distributed amendments to Section 14. **EXHIBIT(nah15a03)**

Steve Wade, representing the Burlington Northern and Santa Fe Railroad, discussed his viewpoint. **{Tape : 1; Side : A; Approx. Time Counter : 16.9}** He pointed out concerns regarding third party inspections and distributed a proposed amendment.

EXHIBIT(nah15a04) The second amendment he distributed dealt with an owner or operator's right to bring an action to court.

EXHIBIT(nah15a05)

Ronna Alexander, Montana Petroleum Distributer Association, spoke for the bill. She said the concept of third party certification was accepted in the industry.

Peter Nielsen, representing the Missoula City County Health Department, spoke in support. He described the inspection process. He had been involved with the department of local government that did the inspections since 1991. He described the good working relationship with companies in the field. Their department helped companies through the compliance process and were a local resource to help them solve problems. This was why there was an advantage to having local oversight regarding local regulations and local zoning regulations where they could catch problems when they were small. This saves time and money, protects the environment and public health. He opposed duplication which would increase cost to the facilities by more than doubling the fees to the facility. Presently, the city-county charges \$25 an hour. Private consultants would charge \$300-\$400 for the same work. He pointed out that the Department of Environmental Quality did not consult with local government agencies regarding their concerns. He distributed letters of designation with local government units **EXHIBIT(nah15a06)** and proposed amendments from the Missoula City County Health Department **EXHIBIT(nah15a07)**. Nielsen distributed a newspaper article **EXHIBIT(nah15a08)**.

Ann Hedges, representing the Montana Environmental Information Center, stressed her concerns regarding conflicts of interest.

{Tape : 1; Side : A; Approx. Time Counter : 31.8}

Opponents: None

Questions from Committee Members and Responses: Rep. Younkin asked Simonich about the department rule making authority rather than the board. Simonich responded that under the Underground Tank Program the department has the rule making authority. He apologized to Missoula County for not responding to their local government concerns. He explained they currently have 15 inspectors that perform inspection which was not enough for statewide coverage. He pointed out there should be no requirement to tell private businesses who they should use. He suggested that third party inspectors should be audited and when a license was issued for tank inspection or removal the department should be notified.

Rep. Erickson asked if the department supported the amendment which would allow certain counties, that want to continue to do the work they have been doing, to continue to do inspections. Nielsen replied he would not support that because it puts tank owners in some counties in a situation where they are required to go to a particular county rather than having their option of bringing in a private inspector. This would allow tank owners in any other county to utilize the market place and bring in a competent inspector of their choice.

Rep. Raney asked if there were other examples where private enterprise were used to do government inspections. Simonich replied that there were times their own agency used the private sector for monitoring or analyzing reports. He cited an example of vehicle inspections in Utah that used private inspectors to perform government inspections. He commented on the potential conflict between an installer and an inspector. He said it was appropriate that the person who installed the tank not inspect it. Inspections include such things as inventory control, annual tank tightness test, and a variety of pieces besides the operation of the facility. The original installer would not have a reason to inspect those things on an annual basis.

Rep. Dale asked Mr. Nielsen if he was licensed as a tank inspector statewide. Nielsen replied his agreement only covered Missoula County. Rep. Dale asked if the bill would allow an expansion of his license. Mills replied that it would. Rep. Dale asked if the same license covered both the private sector and counties. Mills replied that it required the same qualifications. **{Tape : 1; Side : A; Approx. Time Counter : 48}**

Rep. Tuss asked Mr. Simonich whether the 15 active inspectors were able to distribute their work statewide. Simonich replied he had a list that indicated, in each county, the number of facilities in the county and inspections by county.

Rep. Ewer asked Mr. Nielsen if he would remain licensed under the bill and if his qualifications were the same as a state license. Nielsen replied the initial fee would need to be paid. The requirements wouldn't change and would be no different standard than the private sector.

Nielsen pointed out this bill would be duplicating inspections. He asked why would the Legislature fund reimbursement for the inspections if private inspectors were doing it. Why would they fund two inspections? He said what he saw as occurring was the county inspectors were being phased out.

Rep. Ewer asked what was wrong with being phased out. Nielsen replied one thing that was wrong was there was no agent of the state or agent of local government doing the inspections. Third party inspectors were not knowledgeable about the local needs. Local county inspectors offer local resources and do a better job working together with the state, than the state working alone without the local county. Rep. Ewer said there were two positions, one: let the marketplace allow for competition to have inspectors or two: have a regulatory agent that is disinterested, like government. Nielsen said there was a little more to it. He pointed out some counties don't do inspections and there should be someone available to do inspections. Counties can be trained to be a local resource for the community, are able to do the oversight work, and should have the opportunity to do those inspections. They would prefer to be given the option to conduct the inspection.

Rep. Story asked about uniformity of inspections. Mills replied there was no formal follow up but it was a contract that they work by. The program is audited and there are spot checks made on inspections.

{Tape : 1; Side : B}

Rep. Bitney asked for an explanation of the test procedure. Nielsen described the various tank inspection procedures. **{Tape : 1; Side : B; Approx. Time Counter : 3.9 - 6.7}**

Rep. Raney asked if there would be enough tank inspectors to step forward to fulfill the needs. Simonich replied the market determines the price. This was something required to be done by the state creating a niche or an opportunity for a number of environmental consulting firms to step in and fill it. If there

is a lack of private inspectors then there are two options, to fall back on, an individual from the department to inspect or if private inspectors could not do it, get the local governments to do it.

Rep. Raney pointed out the fear to small businesses was the cost which could range from \$250-\$700 per inspection. He suggested a control be initiated over the maximum charge. Simonich replied it was not in the best interest of the department to set prices.

Rep. Tuss asked for an explanation of the need for privatization since the tanks were covered up. Nielsen responded that no one knew the thousands of dollars it cost in tank leaks, dispenser leaks, drive-aways, overfills, which collectively add up. Rep. Tuss asked if a two year requirement for an inspection was protective. Nielsen replied it was protective except for specific instances. Most small systems had gone out of business. He said two years was adequate.

Closing by Sponsor: Rep. Ohs closed. He pointed out times had changed and it was important to make sure tanks were not leaking. Tanks that were not inspected would require either more FTE or privatization. There were more than 1500 tank inspections a year and local government could not handle it.

HEARING ON HOUSE BILLS 159-165

Sponsor: Rep. Karl Ohs, HD 33, presented a series of house bills that were all related to increased fees to support programs in the department as a result of CI-75. **{Tape : 1; Side : B; Approx. Time Counter : 23.7}** He explained HB 159 covered the application for tank inspectors; HB 160 put the renewal fee at \$50; HB 161 dealt with the study guide; HB 162 was the re-examination fee of \$35; HB 163 was the duplicate license fee of \$10; HB 164 increased the fee for registering certain underground tanks from \$20 to \$40; and HB 165 increased the registration fee for tanks over 1100 gallons from \$50 to \$100. He said the fiscal note reflected the cost of printing the election voter guide.

Proponents: None

Informational Testimony: Denise Mills, Environmental Quality, explained the fees were separate ballot issues. The fees were required to run the program.

Opponents: Peter Nielsen, from Missoula City County Health Department, pointed out the need to address HB 159 inspection license to exempt local governments from the fee.

Questions from Committee Members and Responses: Rep. Raney questioned the legality issue of raising fees to fund government programs. He said it appeared to be a laundry list for voters where each fee needed to be described and presented alone. He asked if it would be better to put them together. Joe Kerwin, Deputy Secretary of State for Elections, described how the issues had to be listed singly.

Rep. McGee pointed out to Simonich that CI-75 was voted in because people did not want to pay for more government but wanted to cut costs. Simonich replied the difficulty was the statute specify that the fees shall cover the programs. The current rule says the fee shall be set annually. If the fees are defeated in the election, the budget, which is built on a mix of general fund, fees and federal match, would not be sufficient to cover the program costs. **{Tape : 1; Side : B; Approx. Time Counter : 38 - 40}**

Kathleen Williams pointed out the coordination clause contained in the bills depending on whether CI-75 remained valid or became voted down. This could be decided by the February 18 Supreme Court hearing.

Rep. Hurdle asked why the fees were needed. Simonich replied that Governor Racicot had requested department directors deal with CI-75 honestly with no games. The fees pay for the programs. There is no mechanism in law that provides the ability for the department to get the fee voted on. The Legislature has the power to change the laws. Most fees relate to new programs. If the Legislature desires to cover the programs then the fees are needed. Rep. Hurdle asked what the costs were if the programs were privatized. Simonich replied the costs evolved in the market place and were not attached to the department.

Rep. Wagner asked Simonich if these programs were not privatized and the department stayed involved what were the costs. **{Tape : 1; Side : B; Approx. Time Counter : 48.9}** Simonich pointed out that some inspections were only done every 5-6 years where some were done annually because of particular concerns of the facility. The fees would not be necessary under the old system. He pointed out a decline in the fund balance which made it difficult to meet the program costs. He noted that without privatization the department would continue doing what they had been doing.

Rep. Wagner asked if the department was able to meet the EPA guidelines. Simonich said there was always a concern that the 5000 underground tanks in Montana will leak. He said the EPA was not dissatisfied with the program. This would provide an

innovative approach to regulating activities of the state that have the potential for polluting the environment. It is an opportunity to deal with the issue without increasing the size of government but would increase performance in that area.

Rep. Wagner asked if what the state was doing now in the current program was adequate to protect Montana's environment. Simonich replied that it was not adequate but rather a bare minimum job. He pointed out in ten years the petroleum tank fund had reimbursed for cleanup to the tune of \$33 million. He said it made sense to take additional steps to minimize the potential for major cleanups and major costs of cleanup that Montana would benefit. **{Tape : 1; Side : B; Approx. Time Counter : 54.1-57.0}**

Rep. Ewer pointed out that one tank, if it ruptured, could cost \$20-\$30 thousand dollars for cleanup.

Rep. Hurdle asked about small business stepping in to make money. Simonich replied that the agreement with the counties were based on the fact that the department had limited funds to do this, so in essence local governments had helped subsidize the program by being able to do the inspections for only \$25. When an inspector is sent out from Helena across the state, the inspection cannot be done for \$25. It is an expensive program and is not simply to make money for the private sector. The department is attempting to put together a stronger approach to regulating something that has a known track record for causing environmental problems, by being pro-active. This is an innovative approach in being protective of the environment.

Closing by Sponsor: Rep. Ohs closed. He said the bills point out the frustration of the department in dealing with I-75.

{Tape : 2; Side : A}

EXECUTIVE ACTION ON HOUSE BILL 120

Rep. Younkin **MOVED DO PASS.**

Rep. Erickson presented an amendment. **EXHIBIT(nah15a09)** Rep. Erickson **MOVED** the amendment. He pointed out concerns about money being used on the ground. The reason for the amendment is to limit future costs by using common management fees that they are using this year.

Rep. Story said he had come to the same conclusion after hearing testimony that there was a need to cap the amount used for administration.

The question was called. The motion **PASSED UNANIMOUSLY**.

Rep. Younkin **MOVED DO PASS AS AMENDED**.

Rep. Raney pointed out that grants are for reclamation. If the Board of Oil and Gas needed more money out on the ground they should go to HB 2 to say their staff was inadequate to perform these tasks, instead of taking money destined for the ground.

Rep. Harper pointed out this issue would continue to surface where agencies would continue to dig into the grant and project money for administrative costs. They have been doing it for years and would try to do it more with CI-75. This would supplant agency costs with money that should go for on the ground improvements.

The question was called. The motion **PASSED** 11-8 on a roll call vote.

EXECUTIVE ACTION ON HOUSE BILL 96

Rep. Bitney **MOVED DO PASS**.

Rep. McGee presented an amendment. **EXHIBIT(nah15a10)** He explained he did a lot of easements across state land. There is a rationale of why easements are made across state land. This clarifies where the easement is for future generations so the state, among other people, does not get into litigation. There are many problem-related issues regarding easements which this amendment would help avoid.

Rep. McGee **MOVED** the amendment.

Rep. Younkin questioned the cost of the survey. She pointed out an ariel photo showed a defined road and terrain where a survey was not necessary. Rep. McGee discussed the cost of the survey versus the cost of a lawsuit. He noted there was a logical reason to do a survey when crossing state land.

Chairman Tash suggested Randy Mosley from the Department of Natural Resources clarify the issue. Mosley said a typical issue would be reciprocal access between a land owner and the state.

Rep. Dale asked if the documents that made up the agreement had to be filed at the courthouse. Mosley said he was not involved with the document transfer and could not answer that. **{Tape : 2; Side : A; Approx. Time Counter : 20.5}**

Rep. Stovall asked how the department would describe an easement such as this. He said he had easements across his land and it was easy to describe. A topographical map or aerial photo was a sufficient description. Metes and bound and benchmarks would cost a lot of money.

Rep. Ohs pointed out this was not reinventing the wheel but rather a reciprocal agreement across forested lands. These agreements were good neighbor to good neighbor and this should be facilitated. **{Tape : 2; Side : A; Approx. Time Counter : 23.1}**

Rep. Story asked Mosley if reciprocal easements were binding on heirs and assigns. Mosley said he did not know. These were typically done on forested trust lands to corporations and large land owners and later extended to other individual, isolated, tracts across the state.

Chairman Tash pointed out the bill helps facilitate land management. For example, state lands need reciprocal access for things like management of wildfires.

The question was called on the amendment. The motion **PASSED** with 5 no votes.

Rep. Ewer **MOVED** that new section one, sub 2, be amended from the bill, line 16, 17, 18. The department should think about potential impact and not have a categorical exclusion. He pointed out that there could be an impact to various animal species and there should be room for analysis.

Rep. Wagner pointed out there should be no hurry to give easy access. He said there was a process to do this, even though it may be more time consuming. The Supreme Court would be dealing with this issue.

Rep. Ewer **WITHDREW** the amendment.

Rep. Wagner **MOVED TO TABLE** HB 96. The question was called. The motion **PASSED** with 5 no votes.

ADJOURNMENT

Adjournment: 6:00 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah15aad)